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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1183rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 22 October 1992, at 10 a.m.

Chairman: Mr. POCAR

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1183/Add.1.

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Burundi (CCPR/C/68/Add.2) (continued)

1. The CHAIRMAN invited members of the Committee to make concluding observations on the initial report of Burundi.

2. Mr. NDIAYE thanked the delegation of Burundi for its efforts to supplement a report which had failed to conform to the Committee's expectations or to follow its guidelines. The nature of the Committee's work under article 40 of the Covenant appeared to have been misunderstood. The Committee was not a political entity but a group of independent experts formed to give impartial consideration to information on the human rights situation in a given country. Such information was gathered from States parties in reports and oral presentations, but the Committee often supplemented it by drawing on the press and reports from non-governmental organizations. The Burundi delegation had used strong terms to condemn such reports cited by members of the Committee. It should bear in mind that such language was not customary during the Committee's meetings and could only be counterproductive.

3. Since the report of Burundi was an initial report, it was not surprising that the Committee's methods were not yet known to or understood by the Government. What was essential, however, was for the Government to put the knowledge it had gained to good effect for the preparation of the second periodic report.

4. One of the failings in the report was the frequent citing of legal and constitutional provisions with no information on parallel regulations designed to give them practical effect. Statistics were likewise helpful in giving a clear idea of actual practice regarding various facets of human rights.

5. It was common knowledge that a number of tribal or ethnic groups existed in Burundi. Article 86 of the Constitution itself referred to the various components of the Burundi population. Yet neither in the report nor in the oral presentation was the existence of ethnic minorities recognized. There was no point in denying the obvious, unless the Government wished to engage in a futile game of hide-and-seek. Treatment of minorities was a subject of legitimate inquiry and should be discussed openly if the Burundi Government was to fulfil its commitments under the Covenant.

6. Mrs. HIGGINS said that both positive and negative aspects had emerged from the Committee's consideration of the initial report of Burundi. On the one hand, Burundi had ratified a number of human rights instruments, had made an effort to cooperate with the Committee, was endeavouring to extend the role of democracy and had renewed its commitment to the search for national unity. On the other hand, there were continuing reports of murder, arbitrary detention, torture, unfair trial and lack of freedom of association. As a lawyer, she had been trained to sift various sources of information to determine what was reliable and what was not. The information she had just mentioned, coming as it did from many different sources, merited serious consideration.

7. In response to such information, the Burundi delegation had stated that the killings of Hutus were often perpetrated by Hutus themselves. Yet even if that were true, it did not absolve the Government from investigating the killings. The delegation had also contended that terrorists against whom the State had taken action reported to non-governmental organizations so as to make the State's intervention seem like tribal repression. It was true that terrorists tended to play up to the media and to non-governmental organizations, but, there again, her training as a lawyer told her there must be some truth in the reports.

8. Mr. Ndiaye had referred to the problem of "institutional blockage", which seemed an apt way to describe the situation. Proclaiming the need to preserve "public order", the Government placed severe limitations on freedom of assembly and freedom of expression, and those restrictions were sources of deep concern to the Committee.

9. The Committee could only hope that Burundi would do away with the measures that led it to restrict human rights in the name of public order. It was also necessary for the Government to acknowledge the excesses committed by members of the police and security forces, to investigate allegations of such excesses and to take the necessary action.

10. She hoped that the dialogue with the Committee would help Burundi on the long journey to human rights on which it was embarked.

11. Mr. FODOR said it was commendable that the initial report had been submitted in good time, but it was less commendable that the Committee's guidelines had not been closely followed. That deficiency was also apparent in the supplementary report circulated only very recently, and whose status was not entirely clear. The reports contained so little specific information that it was hard to form a reliable picture of Burundi's implementation of the Covenant. The oral presentation had therefore been particularly useful.

12. The work of drafting the initial report must have been complicated by the fact that the Constitution had been suspended in 1987 and a new one adopted only in March 1992. Nevertheless, both reports were silent on that problem as on all other difficulties experienced in implementing the Covenant. More attention should have been focused on the provisions of the new Constitution and on the new legislation emerging from it.

13. Since the ethnic violence of the late 1980s, there had been a slow but definite movement towards democratization. The new Constitution was illustrative of that movement, for it could be considered more progressive than the previous one. The whole legal system should now be further developed in order to ensure more effective protection of human rights. Such improvements might allay the concerns that he would now detail.

14. With regard to remedies, he was not convinced that the legal system fully reflected the requirements of article 2 (3) of the Covenant, still less that practice in Burundi fully coincided with those requirements. The initial report contained only a laconic statement to the effect that violations of the freedoms and rights of the person were punishable. In the next report, a more detailed description of the remedies available to victims of violations should be given.

15. Facts and dates were important for the purpose of illustrating the observance of all provisions of the Covenant, but were particularly important in regard to article 3. Without them it was difficult to see how equal rights were ensured for men and women, especially in a society where customs unfavourable to equality of the sexes were strongly entrenched.

16. It was disturbing that, as a result of the excessive use of force by security agents, many people had been killed in 1991. Such actions should be prevented, but if they nevertheless occurred, a full, prompt and impartial inquiry should be ordered. Furthermore, in order to avoid escalation of conflicts, all those against whom there was evidence of abuse of power should be brought to justice.

17. The judiciary could be expected to have better prospects for independence since the entry into force of the new Constitution, but he would have liked to hear more detailed information on that subject. The reports he had received indicated that the administration of justice was hampered by a shortage of legal personnel and a heavy case-load. Although financial constraints could account for that, some solution should be found without delay. A democratic society could not exist without the efficient administration of justice. And democracy was the best possible investment a country could make. He hoped that the next report would reflect considerable improvements in the implementation of the Covenant and would convey more detailed information on the legal and factual situation in Burundi.

18. Mr. AGUILAR URBINA said it was unfortunate that a supplementary report from Burundi had been circulated so late as to prevent its translation into all the Committee's working languages, a fact of which the delegation must have been aware. The delegation had intimated that the use by members of the Committee of reports from Amnesty International dishonoured them. He would not accept such statements: if the Committee used such sources, it was purely in an attempt to find out the truth.

19. Returning to the subject of the reports, he said he was satisfied by neither the initial report nor the supplementary information circulated recently. The reports stated that the Constitution incorporated all the rights mentioned in the Covenant, yet it seemed that, in practice, so many derogations from those rights were permitted that enjoyment of human rights became the exception rather than the rule. No human right, it appeared, could be enjoyed fully.

20. He had difficulty in understanding the true status of the Charter of National Unity. Was it a legal or a supralegal document? Another apparent contradiction concerned minorities. Though statistics showed that part of the population practised religions other than the country's dominant one - Roman Catholicism - those groups were not recognized as religious minorities. Nor were the various ethnic groups recognized as distinct entities, even though in some cases they greatly outnumbered the dominant ethnic group, so that it would in fact be more accurate to speak of ethnic majorities, not minorities.

21. Mr. PRADO VALLEJO said that the dialogue between the Committee and the delegation of Burundi had been constructive and that the delegation would have gained a clear understanding of the Committee's concern regarding the serious human rights situation in that country.

22. The Burundi report said nothing about the practical difficulties encountered in giving effect to the rights recognized in the Covenant and did not reflect the reality of the human rights situation in that country.

23. He drew attention to the fact that the ruling minority used repression in order to enforce its policy over the majority. There seemed to be no legal assistance available to detainees to defend themselves against charges, as provided for in the Covenant. Furthermore, it was quite possible that there were people in detention who had not been charged or tried. It should also be noted that there was no application of habeas corpus in Burundi, which was a serious matter since it severely limited a person's right to a defence. Moreover, the right to question witnesses seemed to be severely restricted.

24. The Code of Penal Procedure had not been amended to bring it into line with the new Constitution. There was no freedom of expression, and people had been detained merely because they had objected to some sections of the Constitution.

25. In November 1991, members of the Hutu ethnic group had been the target of violent oppression, yet no official inquiry had been conducted. According to available information, in 1991 alone, the security forces had committed some 1,000 extrajudicial executions. Large numbers of persons were detained without trial and complaints of torture were not investigated. The situation was a difficult one and he hoped that the concern expressed by members would encourage the Government to strive to implement the provisions of the Covenant as a whole throughout Burundi.

26. Mr. WENNERGREN said that the new Constitution and the Charter of National Unity constituted a good basis for the fruitful and constructive development of human rights in Burundi.

27. Referring to the Isidore Ciiza affair, he recalled that the Special Rapporteur on summary or arbitrary executions had sent a telegram to the Government of Burundi transmitting allegations that in November 1991 six persons, including four children, had been executed by soldiers. In his earlier statement, he had asked the delegation why no reply had been given to the telegram and had requested information on the affair. Instead of replying, the delegation had blamed non-governmental organizations for accusing Burundi of killing children. In fact, it was he (Mr. Wennergren) who should be blamed because he had raised the issue in view of the outrageous nature of the affair and in a desire to obtain clarification.

28. Miss CHANET thanked the delegation of Burundi for its praiseworthy efforts to dispel any misunderstanding that might have arisen in connection with the form of the report and the date of its submission.

29. The Committee was entirely free to use information submitted by non-governmental organizations. It was for the delegation to challenge that information if it did not agree, but that challenge should take the form of demonstration and not of condemnation. The events denounced by non-governmental organizations had also been mentioned by the Special Rapporteur on summary or arbitrary executions, who held an official position within the United Nations system. That fact showed that members of the Committee had more than one source of information in their search for the truth.

30. The replies given the previous day by the representative of Burundi made it clear that it was the State and it alone which was responsible for the implementation of the Covenant. It was for the State, through its Constitution and internal legislation, to ensure observance of the provisions of the Covenant in respect of its citizens, and it also had an international obligation vis-à-vis the Committee and the international community, particularly when it submitted a report under article 40 of the Covenant.

31. The delegation had made several references to article 10 of the Constitution, which recognized the primacy of the Covenant over national legislation. It should be noted, however, that the Covenant was not a code of penal procedure. It determined certain rights and principles but the need for a law concerning police custody was clear, for example. The delegation had said that police custody was not regulated by the law in Burundi. She would like to know how it was possible for it not to be regulated by law in a system where habeas corpus did not exist. In such a situation, it was the law that could provide for cases concerning the arrest of persons, the length of time of detention and conditions for access to a judge. Referring to the second sentence of article 9 (1) of the Covenant, she said that there must be a procedure established by law in conformity with that provision. In no case could the inclusion in the Constitution of article 9 act as a substitute for internal legislation establishing conditions under which persons could be arrested.

32. The delegation had not replied to the question concerning the specific application of the decree of 30 December 1991 limiting the freedom to demonstrate.

33. The regime applicable to political parties seemed to be extremely constrictive and to limit considerably the rights and freedoms guaranteed by articles 19, 22 and 25 of the Covenant.

34. In conclusion, she hoped that the Government's first contact with the Committee would enable it to appreciate fully the extent of its obligations under the Covenant and to apply the Covenant's provisions to all persons subject to the State's jurisdiction.

35. Mr. EL SHAFEI said that he had noted in particular the Government's policy of openness towards pluralism and the establishment of State bodies emanating from the Charter of National Unity with a view to achieving genuine national reconciliation.

36. The promulgation of a new Constitution which sought primarily to ensure the rights and freedoms of the citizen was to be welcomed. Unfortunately, the unrest that had occurred the previous year and the current year had already reversed the situation. Instead of restoring order and detaining the guilty parties, the law enforcement forces had massacred innocent people out of ethnic hatred. It must also be stressed that elements of the security forces had carried out extrajudicial executions in detention centres. The desire of the authorities to preserve public order and the integrity and sovereignty of the country did not justify the violent action taken by the security forces. Burundi was not the only country which had to face difficulties and division in its society. What was essential in such a situation was that the authorities should respect their national and international commitments. The

Covenant stipulated clearly the limits that should be observed by countries in utilizing their security forces.

37. The head of the delegation had sought to deny that there were ethnic groups in Burundi. In that case, he wondered why article 57 of the Constitution stipulated that political parties were prohibited from identifying themselves in form, in action or in any manner with an ethnic group, a region, a religion or a sect. The essential point for the Committee was that there should be no discrimination. In that regard, articles 2 and 26 of the Covenant were quite clear. Under article 2, each State also had an obligation to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant.

38. Mr. HERNDL said that the report of Burundi did not provide information on the practices and legislation that had been adopted in order to implement the Covenant in the country. Members had been left with a series of vague statements such as that given in paragraph 32 of the report. He hoped that, in its next report, the Government would comply with the Committee's guidelines.

39. Another problem related to the supplementary document which had been submitted but which was not yet available in all working languages and presumably superseded the report of November 1991. However, it did not correspond with the earlier report and a revision might be in order.

40. He remained concerned about the question of respect in Burundi for the right to life. He agreed with other members that national reconciliation could not be based on non-respect for the rights of individuals, but could only be achieved through peace, observance of the rule of law and mutual understanding.

41. He hoped that the issue of summary executions, which continued to be reported and corroborated by international documentation, would be addressed by the Government in the near future. He noted that the Government had introduced measures to curb the violence and prosecute the officials responsible for the killing of innocent persons.

42. Turning to certain constitutional problems, he quoted articles 10 and 15 of the Constitution, from which he concluded that laws which were inconsistent with the Covenant could be challenged before the Constitutional Court. That was a progressive norm. However, according to the articles dealing with human rights, the enjoyment of those rights was subject to public order, which was a potentially disturbing and dangerous element.

43. Article 40 of the Constitution contained an escape clause which subordinated the exercise of the right of individuals to certain political considerations and seriously restricted the enjoyment of the right of freedom of expression, the right to form political parties, and the right to freedom of conscience. The Constitution also set out a series of duties which must be considered in detail to determine the extent to which they corresponded to the provisions of the Covenant.

44. He appreciated the dialogue which had been initiated with the Government and expressed the hope that it would adapt its conduct and legislation to the provisions of the Covenant to which members had referred.

45. The CHAIRMAN commended the Government of the State party on the timely submission of its initial report and also for providing additional general information to constitute a core document that would serve as a basic reference source. Burundi was one of the first countries to have done so, and that draft document offered further evidence of its desire to cooperate under the reporting procedure. The initial report itself unfortunately gave few details on actual practice, although that was quite common in such reports and the ensuing dialogue generally supplemented the rather summary initial information.

46. He thanked the Burundi delegation for its efforts to answer Committee members' questions. In that regard, it should be pointed out that the Committee used all sources of information available to it and questions might be prompted by reports of alleged violations to which members did not necessarily give credence but on which they sought clarification. The Committee's role was not to accuse but to seek to shed light on the situation in a given country so as to help in improving that situation and possibly in reviewing legal provisions or administrative practices to ensure better protection of human rights. It was hoped that the State party, through its replies, would participate fully in that cooperative endeavour and not simply reject allegations outright or challenge the sources of the information. Grave violations appeared to be continuing in Burundi, despite the efforts of the authorities, and he hoped that the Committee's comments and suggestions would be taken into account by the Government and that it would be able to provide details of developments bringing laws and practices into conformity with the Covenant in the next report.

47. He thanked the Burundi delegation once again for its participation in the dialogue and invited it to make its concluding remarks.

48. Mr. BIRIHANYUMA (Burundi) expressed his sincere appreciation to the members of the Committee for their additional comments. In responding, he wished first of all to reaffirm the commitment of his Government to improving respect for human rights as a fundamental part of the positive initiatives being made under the Third Republic on the path towards democracy. One imponderable, however, was the degree of security of the territory of a State, which did not always choose its enemies. In all countries, attacks from outside, war and violence jeopardized human rights. In Burundi it was the terrorism of tribalist groups that threatened the peace. They claimed to be fighting to protect human rights, but the events of 1988, 1991 and 1992 had in fact brought nothing but sorrow and desolation. People under the Third Republic had in any case never doubted that the Government recognized the rights of all Burundi nationals, whatever their background.

49. On the question of ethnicity, his delegation had not tried to conceal the problems that arose in the social field or the lack of understanding between some constituent elements of the population. What it had sought to explain was that such problems did not stem from ethnic differences in the scientific meaning of that term, involving religions or linguistic differences, differences in customs and so on. That meaning of the term "ethnic" did not apply in Burundi.

50. Concerning the institution called Ubushingantahe, again there seemed to have been a misunderstanding. Far from being disparaging, his delegation had

wished to point out the comfort it had brought in times of trouble, and also its relevance in the application of article 20 of the Covenant.

51. The Charter of National Unity was to be understood as a covenant among the people of Burundi formulated on the basis of a referendum with a view to eliminating war and violence and moving towards reconciliation. It had an essentially moral dimension, constituting a kind of moral code of conduct applicable to all Burundi citizens. Thus, he could not see in what way it conflicted with the provisions of the Constitution, the Penal Code or the rules of law in general. Nor could he see any "institutional blockage" due to the fact that the Constitution allowed for the exercise of certain rights subject to exceptions provided for by particular laws. The Covenant itself envisaged such a mechanism.

52. On the question of women's role in public life, two members of the Government were women. The National Assembly did not yet exist but elections were due to be held in March 1993. His delegation had already given statistics concerning university teachers.

53. To his knowledge, no member of a political party or any other person had been arrested for expressing views contrary to the Constitution. Such allegations were groundless. As to criticism of investigations into cases of human rights violations, including torture and enforced disappearances, speaking as a judge himself he wished to underline the determination of the Burundi judicial system not to close its eyes to violations of the law, even if committed by the Government. Persons found guilty of excesses had been sentenced to terms of imprisonment, and the Government and judicial authorities severely punished acts of torture or abuses, including those committed by the police forces. It was unfortunate that those efforts were not brought to the attention of international public opinion. A case that had received such attention, however, was that of Isidore Ciiza. Mr. Ciiza was not dead, as Burundi non-governmental organizations had been able to corroborate; he was in detention because of his involvement with terrorist groups. The house in which members of his family had died during the events of November 1991 had been caught in the cross-fire between terrorists and security forces and had burned down. Any further inquiries on the matter could be presented through normal channels.

54. Judges in Burundi normally held office for life. Oversight of their careers was exercised by the Higher Council of the Judiciary. Judges could not be removed from the bench at the whim of the executive branch. They might leave the bench voluntarily to take early retirement, and of course they were not immune to disciplinary or penal sanctions.

55. In conclusion, he wished to express his appreciation for the way in which the Committee had facilitated the dialogue with his delegation. Future contacts would certainly reflect the progress of his country on the path of democracy.

56. Ms. SAMOYA (Burundi) said that she wished to express her sincere thanks and appreciation for the dialogue which had been initiated and to assure the Committee that her delegation had at no time doubted the impartiality and good intentions of its members. Burundi greatly valued the way in which the Committee, as a body of independent experts, carried out its sensitive, demanding and noble task of assisting States parties with advice on how to

apply the Covenant and ensure strict respect for human rights. She also wished to emphasize that Burundi cooperated openly with non-governmental organizations, which performed their functions in the country with complete freedom and would surely attest to the Government's willingness to respond to their requests for information or assistance.

57. Her delegation nevertheless believed that it was legitimate for it to endeavour to clarify and provide what it believed to be a correct interpretation of the problems facing the country with regard to implementation of the Covenant, and especially concerning the veracity of any allegations made. Its intention had not been to plead the case of the Government, even if it represented the Government. It had noted the comments and recommendations made by members of the Committee, all of which would be taken into consideration.

58. Her delegation recognized that the report before the Committee could have been better prepared so as to focus more on the practical and everyday aspects of implementation of the Covenant. She assured the Committee of her Government's desire to make improvements in future periodic reports and trusted that the next stage in the dialogue with the Committee would be more fruitful.

59. The CHAIRMAN said that the Committee had concluded its consideration of the initial report of Burundi (CCPR/C/68/Add.2). The second periodic report of the State party would be due on 8 August 1996.

60. Mr. Birihanyuma and Ms. Samoya (Burundi) withdrew.

The public meeting rose at 12.15 p.m.